

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

COMPASS-CHARLOTTE 1031, LLC,

Plaintiff,

-against-

Case No.: 24-cv-55

PRIME CAPITAL VENTURES, LLC
BERONE CAPITAL FUND, LP
BERONE CAPITAL PARTNERS LLC
BERONE CAPITAL LLC
BERONE CAPITAL EQUITY FUND I, LP
405 MOTORSPORTS LLC f/k/a Berone Capital Equity
Partners LLC

DECLARATION OF
CHRISTOPHER V. FENLON

Defendants.

I, Christopher V. Fenlon, hereby declare the following under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am an attorney duly admitted to the practice of law before the courts of the State of New York and am admitted to practice law before this Court.
2. I am also a partner with the law firm of Hinckley, Allen & Snyder LLP, attorneys for Plaintiff, Compass-Charlotte 1031, LLC (“Plaintiff” or “Compass-Charlotte”) in the above-referenced matter.
3. I respectfully submit this declaration in further support of Plaintiff’s Emergency Motion.
4. In accordance with Local Civil Rule 7.1(e), reasonable advanced notice of Plaintiff’s original Application for an Order to Show Cause was provided to the Defendants. On January 11, 2024, at 5:39 p.m. EST, I e-mailed notice of the forthcoming Application for an Order to Show Cause to Prime Capital Ventures, LLC, Berone Capital Fund, LP, Berone Capital Partners

LLC, Berone Capital LLC, Berone Capital Equity Fund I, LP, and 405 Motorsports LLC f/k/a Berone Capital Equity Partners LLC. A copy of this notice is attached hereto as Exhibit A.

5. The January 11, 2024 notice specifically identified the relief Compass-Charlotte intended to seek, including: (i) appointing a receiver; (ii) authorizing Compass-Charlotte to take expedited discovery; (iii) appointing a temporary receiver pending a hearing on the forthcoming Application for an Order to Show Cause; and (iv) authorizing Compass-Charlotte to serve non-party subpoenas on banks and financial institutions. *See* Exhibit A.

6. On January 12, 2024, at 2:40 p.m. EST, the Plaintiff's Verified Complaint, supporting papers, and proposed Order to Show Cause for the Appointment of a Receiver on an Emergency Basis and for Expedited Discovery were processed by the Court's CM/ECF system and made publicly available.

7. Shortly thereafter, at 3:31 p.m. EST, the Court granted the Plaintiff's proposed Order to Show Cause for the Appointment of a Receiver on an Emergency Basis and for Expedited Discovery (the "Order") (Dkt. No. 8).

8. The Order required that the Plaintiff serve a copy of the Verified Complaint, the Order, and supporting papers upon the Defendants on or before January 16, 2024, by e-mail and overnight courier.

9. In accordance with the Order, Defendant Prime Capital Ventures, LLC was served with a copy of the Verified Complaint, Order, and supporting papers via e-mail upon Kris Roglieri (kris@primecommercialending.com), Kimberly Humphrey (kimmy@primecommercialending.com), Pieter Van Tol, Esq. (pieter.vantol@hoganlovells.com), and Ned Trombly, Esq. (ntrombly@barclaydamon.com) on January 12, 2024 at 5:09 p.m. EST. A true and correct copy of that e-mail is attached as Exhibit B.

10. Further, Defendant Prime Capital Ventures LLC was served with the Verified Complaint, Order, and supporting papers at 66 Pearl Street, 10th Floor, Albany, NY 12207 via overnight courier delivery on January 16, 2024 at 10:18 a.m. EST. A true and correct copy of that delivery confirmation is attached as Exhibit C.

11. Additionally, Defendants Berone Capital Fund, LP, Berone Capital Partners LLC, Berone Capital LLC, Berone Capital Equity Fund I, LP, and 405 Motorsports LLC f/k/a Berone Capital Equity Partners LLC were served with a copy of the Verified Complaint, Order, and supporting papers via email to Fabian Stone (stone@beronecapital.com) and Jeremiah Beguesse (jeremiah@beronecapital.com) on January 12, 2024 at 5:09 p.m. EST. *See* Exhibit B.

12. Further, Defendants Berone Capital LLC, Berone Capital Fund, LP, and Berone Capital Equity Fund I, LP were served with the Verified Complaint, Order, and supporting papers at A Registered Agent, Inc., 8 The Green – Suite A, Dover, Delaware 19901 via overnight courier delivery on January 16, 2024 at 9:08 a.m. EST. Upon arrival of the overnight courier, delivery was refused by the Agent.

13. Additionally, Defendants Berone Capital Partners LLC and 405 Motorsports LLC f/k/a Berone Capital Equity Partners LLC were served with a copy of the Verified Complaint, Order, and supporting papers at Sunshine Corporate Filings LLC, and Registered Agents, Inc., respectively, both located at 7901 4th Street, N. – Suite 300, St. Petersburg, Florida, 33702 via overnight courier delivery on January 18, 2024 at 11:19 a.m. EST. The Verified Complaint, Order, and supporting papers were sent on January 15, 2024, but delivery was delayed by two days due to weather-related issues. A true and correct copy of the delay notice is attached as Exhibit D. A true and correct copy of the delivery confirmation is attached as Exhibit E.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: January 19, 2024
Albany, New York

By: /s/ Christopher V. Fenlon
Christopher V. Fenlon, Esq.